In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.1557 of 1984.

Date of decision:1.8.2007.

Dina Nath and others.

...Petitioners.

Versus

The Financial Commissioner, Revenue and others.

...Respondents.

...

Coram Hon'ble Mr. Justice S. N. Aggarwal.

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Present: Mr. R. L. Batta, Senior Advocate with Mr. J.S. Saggi Advocate for the petitioners.

Mr. S.S.Kharab, AAG Haryana.

...

Judgment.

S. N. Aggarwal, J.

Kanahiya Lal, respondent No.5 was resident of Ram Kali, District Multan (now in Pakistan). He owned 10 SA and 14-1/4 units of land in that village. After the partition of the country, he migrated in India. On 17.6.1950, he was allotted 14 SA 7 units of land in the suburban of Hansi and 20 SA and 12-3/4 units of rural land in village Garia/199, Tehsil and District Hisar. Later on, said Kanahiya Lal sold the entire land allotted to him in Dhani Thakuria Mazra, Hansi (suburban area of Hansi) measuring 135 Kanals 18 Marlas to the petitioners vide sale deed dated 30.6.1964 for a sum of Rs.18,000/- and possession was also delivered. Entries were

incorporated in the revenue record. The petitioners constructed two tubewells on the land purchased by them from Kanahiya Lal. They also developed and improved the quality of land.

Thereafter the Assistant Registrar-cum- Managing Officer, Haryana, respondent No.3, made a reference on 21.10.1975 (Annexure P-1) to the effect that Kanahiya Lal should have been granted only 7 SA and 7-1/4 units of suburban area of Hansi instead of 14 SA and 7 units . This was so done on the plea that the land of Kanahiya Lal in village Ram Kali (Pakistan) was rural land as it was so held by the Delhi High Court in Civil Writ Petition No.529 of 1967 decided on 30.1.1975 in the case titled as **Smt. Atma Devi Versus Union of India.** Therefore, Kanahiya Lal has been granted more land in suburban area whereas he should have been granted less area in suburban and more area in rural area. This reference was accepted by the Chief Settlement Commissioner vide order dated 2.7.1979 (Annexure P-2). The petitioners filed an appeal before the Financial Commissioner, Revenue -cum-Secretary to Government, Haryana Rehabilitation Department, vested with the powers of Central Government under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short the Act of 1954).The said appeal was dismissed by the Financial Commissioner vide order dated 6.12.1983 (Annexure P-6). The petitioners filed a review application which was also dismissed by the said officer vide order dated 6.3.1984 (Annexure P-10).

Hence, the present writ petition.

The submission of learned counsel for the petitioners was that the land was allotted to Kanahiya Lal on 17.6.1950 and the said allotment

was cancelled by the Chief Settlement Commissioner on 2.7.1979 i.e. after about 29 years. The petitioners purchased the land from Kanahiya Lal vide sale deed dated 30.6.1964. It was submitted that exercise of powers under Section 24(1) of the Act of 1954 is totally arbitrary and unwarranted. It was also submitted that no opportunity of hearing was given to the petitioners and that the land allotted to Kanahiya Lal in district Hansi was not suburban land. Rather, it was rural land and lastly it was submitted that the petitioners were willing to purchase it directly from the department. Reference was placed on the judgment of this Court reported as **Karam Chand Thakar Dass v. Union of India and another,** AIR 1967 Punjab 85 and the latest judgment of this Court reported as **Pandit Chuni Lal Versus the Financial Commissioner Revenue and Secretary to Government, Punjab and others,** 2006(1) Recent Civil Reports (Civil) 665.

On the other hand, the submission of learned State counsel was that the suburban area allotted to Kanahiya Lal was in excess and,therefore, it could rightly be cancelled whenever the error was detected. It was submitted that the land in village Ram Kali left by Kanahiya Lal in Pakistan was rural land while the allotment was made to Kanahiya Lal in suburban area, Hansi considering the land in village Ram Kali as suburban land. Later on, the Delhi High Court vide judgment dated 30.1.1975 passed in Civil Writ Petition No.529 of 1967 in the case reported as **Smt. Atma Devi Versus Union of India (supra),** held that the land in village Ram Kali (Pakistan) was rural land and on its basis, the land allotted to Kanahiya Lal in suburban area was cancelled and he was to be allotted the area equal to the cancelled land in rural area. Reliance was placed on the judgment of the

Hon'ble Supreme Court reported as **Om Parkash and others Versus Union of India and others,** 1970(3) Supreme Court Cases 942. It was submitted that the revisional power under Section 24 of the Act of 1954 could be exercised at any time without limit and,therefore, the impugned order of cancellation was legal and valid.

These submissions have been considered. The record has been perused.

In the present case, the land was allotted to Kanahiya Lal both in suburban and rural areas on 17.6.1950. Permanent rights were conferred. Kanahiya Lal remained owner in possession of the said land as owner till the said land in suburban area, Hansi was sold by him to the petitioners vide sale deed dated 30.6.1964. After the purchase, the petitioners remained in possession of the said land as owners. They installed two tubewells in the said land and developed and improved its quality after investing huge amount. It was only in the year 1979 that the allotment in favour of Kanahiya Lal was cancelled on the plea that the land owned by him in village Ram Kali (Pakistan) was rural land and not suburban and the judgment of the Hon'ble Delhi High Court dated 30.1.1975 was made the basis.

From the above discussion, it is clear that the allotment made to Kanahiya Lal was not conditional nor it was made on the basis of mis-representation or fraud played by Kanahiya Lal on the Rehabilitation Authorities. Rather, the permanent rights of this land were conferred on him as is stated in the order of cancellation dated 2.7.1979 (Annexure P-2). Therefore, the power under Section 24 of the Act of 1954 could not have

been exercised after the expiry of about three decades. The exercise of this power in the facts of this case is clearly arbitrary and is unsustainable in law\. It was held by the Hon'ble Division of this Court in **Karam Chand Thakar** Dass' case (supra) as under:-

> “Coming back, however, to the question of the meaning of the expression “ at any time” in S. 24(1) of the Act, I am firmly of the view that the phrase does not authorise the Chief Settlement Commissioner to interfere with a completed deal after any length of time implying absolute indefiniteness. “At any time” in this section certainly means:
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> (i) at any time so long as the property in respect of which order is sought to be passed continues to be in the compensation pool;
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> (ii) at any time thereafter if the person sought to be affected by the revised order is found to have been a party to the original order which would not have been the same if party in question had not acted in a certain way; and
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> (iii) at any time in other suitable cases provided it is within a reasonable time which would depend on the peculiar facts and circumstances of each case.
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> (37) I am further of the view that if Chief Settlement Commissioner exercises his jurisdiction under S.24(1) of the Act after a long time or after undue delay he must deal in his order with the question of delay so as to make it obvious that the delay is not undue and could not be avoided in the

c\circumstances of the case and also to show that it is necessary in the interest of justice that interference should be made in the previous order even after lapse of so much time. Any order under S.24 (1) of the Act passed with undue delay or after the lapse of several years of the passing of the property (in respect which the order is passed) out of the compensation pool may possibly be liable to be struck down on the ground that it is opposed to the rule of law to the effect that a quasi judicial orders should not be lightly interfered with after they have once achieved finality merely because the Chief Settlement Commissioner thinks that the original order was as good as it should have been".

The same view of law has been taken by this Court in Pandit Chuni Lal's case (supra). After discussing various judgments relied upon by the parties, it was concluded as under;-

"This Court is of the view that the controversy in the present case is squarely covered by the ratio of judgment in Gram Panchayat Kakran's case (supra). Delay in the present case, for making suo motu reference is more than 30 years, for which no explanation has been furnished by the respondents."

In the present case also, as noticed above, the allotment has been cancelled after about 30 years.

So far as the judgment of the Hon'ble Supreme Court in **Om Parkash and others's** case (supra) relied upon by the State counsel is concerned, the allotment had not yet become final. It was observed by the

Hon'ble Supreme Court in para No.5 of the judgment as under:-

> “It is not denied that the appellant's father obtained the allotment on the basis of an oral verification of his claim under 3 categories-Quasi-permanent, Temporary and Reserve. This oral verification is subject to correction, variation and cancellation if subsequently relevant revenue records which were called for from the Pakistan authorities justified such a course.”

But, in the present case, Kanahiya Lal was granted P.rights as is obvious from the order of cancellation dated 2.7.1979 (Annexure P-2). The allotment was made final. It was not conditional. It was a concluded transaction which had become final. Such permanent rights of suburban land could not be lightly interfered with and after about 30 years.

It also deserves notice that there is no evidence if the land was allotted to Kanahiya Lal on the basis of oral verification of his claim or if it was secured by him by way of fraud or by false representation or by concealment of any material fact. In the absence of all these circumstances, it could not have been cancelled or disturbed after 30 years merely on the basis of some observations made by the Hon'ble Delhi High Court in some case to which Kanahiya Lal was not a party. It may be that if Kanahiya Lal had been party in the case decided by the Hon'ble Delhi High Court, he could have succeeded to prove that the land of village Ram Kali was suburban and not rural area or that his land situated in village Ram Kali was suburban being more near to the urban area of Multan. Since Kanahiya Lal was not a party in the case before the Delhi High Court, therefore, the

judgment dated 30.1.1975 cannot be made a basis for denial of rights of Kanahiya Lal, allottee.

The plea taken by the Rehabilitation Department was that Kanahiya Lal has been allotted more land in suburban area whereas he should have been given more land in rural area. There is no document before this Court if Kanahiya Lal was allotted some land in rural area in lieu of the area in dispute. Therefore, the status quo regarding the land allotted to Kanahiya Lal in suburban area would not affect the rights of the department to a large extent.

Moreover, the petitioners are bona fide purchasers for consideration without notice. Kanahiya Lal was clearly owner in possession of the land since 1950 which was purchased by the petitioners vide sale deed dated 30.6.1964 for a sum of Rs.18,000/-. Even the petitioners remained owners in possession of the land from 1964 onwards, but a cloud was cast on their rights by the order of cancellation dated 2.7.1979 (Annexure P-2). The order of cancellation of allotment in favour of Kanahiya Lal has been passed without considering the rights of the petitioners who are bona fide purchasers for consideration without notice and much before the date of cancellation. Therefore, the order of cancellation is a non-speaking order. No reasons have been given for the cancellation of P. rights of Kanahiya Lal in the land alllotted in the suburban area of Hansi. Similarly, the Secretary to Government, Haryana, Rehabilitation Department dismissed the appeals in three lines after noticing the submissions made by the petitioners by holding that he did not find any force in the arguments advanced on behalf of the petitioners.

These orders are non-speaking orders and cannot be sustained.

In view of the discussion held above, the impugned orders are set aside. This petition is accepted and the petitioners are held to be the owners in possession of the suit land. The respondents might not allot any land to Kanahiya Lal in rural area in pursuance of Annexure P-3 dated 6.8.1979 as the cancellation of the land allotted to him in suburban area Hansi has been set aside.

August 1,2007. (S. N. Aggarwal)
Jaggi Judge